

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMIT KUMAR,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR,

Respondent.

CASE NO. 2:22-cv-00033-JHC

ORDER

This matter comes before the Court on the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. # 14. The Court previously adopted the then-unopposed Report and Recommendation. Dkt. # 15. Petitioner Amit Kumar moved to reopen the case, saying that he could not timely object due to contracting COVID-19. Dkt. # 17. The Court reopened the case and granted Petitioner 14 days to file objections. Dkt. # 18. Petitioner filed objections. Dkt. # 19. Having reviewed Petitioner's objections (Dkt. # 19) and pertinent filings, the Court ADOPTS the Report and Recommendation, DENIES Petitioner's habeas petition (Dkt. # 1), and DISMISSES the case with prejudice.

In his objections, Petitioner alleges that (1) he does not present a flight risk because of his ties to his family and community and employment opportunity; (2) he is not a danger to the

1 community as he has no criminal history; (3) he was diagnosed with COVID-19 comorbidities,
2 contracted COVID-19, and lost 15 pounds from being unable to eat during his illness; (4) he
3 observed detention center staff fail to follow proper cleaning procedures, which created a
4 dangerous environment for him; (5) he is eligible for release under *Fraihaat v. U.S. Immigration*
5 *& Customs Enforcement*, 16 F.4th 613 (9th Cir. 2021); (6) the discretionary factors an
6 immigration judge (IJ) may consider during a bond hearing support his release; and (7) his
7 pending challenges to the charges in India before the Indian High Court constitute a material
8 change in circumstance justifying granting him another bond hearing.

9 For the most part, Petitioner's objections raise issues¹ that would require the Court to
10 review the IJ's discretionary judgments, which, as the Report and Recommendation notes, the
11 Court cannot do. *See* 8 U.S.C. §1226(e); *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir.
12 2017) (holding only constitutional claims and questions of law are subject to judicial review).

13 As for the contention that Petitioner is eligible for release under *Fraihaat*, as the Report
14 and Recommendation notes, Petitioner has not established a particularized claim of a violation of
15 his constitutional rights. While he alleges that he contracted COVID-19, he does not show this
16 occurred because of a constitutional violation or that the detention center could not or refused to
17 care for him. He alleges that the detention center is failing to adequately clean medical
18 equipment, laundry, and food trays, but he does not show that the alleged cleaning practices
19 deviate from an accepted standard or policy.


20 The Court recognizes the length of time Petitioner has been detained and that his last
21 bond hearing was almost 11 months ago. As the Report and Recommendation notes, as time
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23 ¹ This includes discretionary judgments about whether Petitioner is a flight risk and whether he
24 poses a risk to the community. And the factors Petitioner discusses in his objections are for the IJ to
consider during a bond hearing, not for this Court to weigh in reviewing a habeas petition.

1 passes, the *Mathews*² factors for determining due process requirements may begin to tip in favor
2 of holding another bond hearing. Petitioner alleges that he has challenged the charges against
3 him and that the challenge is pending before the Indian High Court; he asserts that this challenge
4 is a material change in circumstance justifying granting him another bond hearing. The Court
5 agrees with the Report and Recommendation that a successful challenge to the charges may
6 constitute a material change. Pending challenges, however, are too speculative to constitute a
7 material change in circumstance.

8 Accordingly, the Report and Recommendation is ADOPTED, Petitioner's habeas petition
9 is DENIED, and the case is DISMISSED with prejudice. The Clerk is directed to send
10 uncertified copies of this Order to all counsel of record and to any party appearing pro se at said
11 party's last known address.

12 Dated this 27th day of July, 2022.

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14 John H. Chun
15 United States District Judge
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² *Mathews v. Eldridge*, 424 U.S. 319 (1976).